

JOE A. LYNCH
7264 NC Hwy 39 S
Zebulon, NC 27597



BOARD OF VETERANS' APPEALS

DEPARTMENT OF VETERANS AFFAIRS

WASHINGTON, DC 20038

Date: April 15, 2019

JOE A. LYNCH
7264 NC Hwy 39 S
Zebulon, NC 27597

Dear Appellant:

The Board of Veterans' Appeals (Board) has made a decision in your appeal, and a copy is enclosed.

<i>If your decision contains a</i>	<i>What happens next</i>
Grant	The Department of Veterans Affairs (VA) will be contacting you regarding the next steps, which may include issuing payment. Please refer to VA Form 4597, which is attached to this decision, for additional options.
Remand	Additional development is needed. VA will be contacting you regarding the next steps.
Denial or Dismissal	Please refer to VA Form 4597, which is attached to this decision, for your options.

If you have any questions, please contact your representative, if you have one, or check the status of your appeal at <http://www.vets.gov>.

Sincerely yours,

K. Osborne
Deputy Vice Chairman

Enclosures (1)



BOARD OF VETERANS' APPEALS

DEPARTMENT OF VETERANS AFFAIRS

**IN THE APPEAL OF
JOE A. LYNCH**

Docket No. 17-44 610

DATE: April 15, 2019

ORDER

Entitlement to an initial rating in excess of 30 percent for posttraumatic stress disorder (PTSD) is denied.

FINDING OF FACT

The occupational and social impairment resulting from the Veteran's PTSD has been manifested by occasional decrease in work efficiency and intermittent inability to perform occupational tasks, although generally functioning satisfactorily with normal routine behavior, self-care, and conversation.

CONCLUSION OF LAW

The criteria for an initial rating in excess of 30 percent for PTSD have not been met. 38 U.S.C. § 1155 (2012); 38 C.F.R. §§ 4.7, 4.130, Diagnostic Code 9411 (2018).

REASONS AND BASES FOR FINDING AND CONCLUSION

The Veteran had active service in the United States Marine Corps (USMC) from July 1972 to July 1976.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from an August 2016 rating decision issued by the VA Regional Office (RO) in Montgomery, Alabama.

Initial Increased Rating -- PTSD

The Veteran asserts that he should have a higher rating for his PTSD as his symptoms are worse than those contemplated by the currently assigned rating.

In a private March 2015 private psychiatric evaluation report, the Veteran was noted to report symptoms of sleep impairment, intrusive memories, difficulty maintaining relationships, anger issues, difficulty with confined spaces, panic attacks, mood swings, and feeling sad and depressed. The Veteran was noted to report that he did not have any real friends, he isolated himself, and displayed antisocial behaviors outside the home. He was noted to report problems with memory. The private examiner diagnosed PTSD and noted that the Veteran's presentation indicated that the performance of his job functions and social interactions were severely limited due to his in-service experiences. The examiner noted that the Veteran's lack of social support was increased as a result of his inability to control physical and emotional reactions to stressors that remind him of his in-service trauma. The examiner noted that the Veteran's family relations, judgment, thinking, and mood were increasingly limiting his quality of life.

At an August 2016 VA examination, the Veteran reported that he experienced anxiety and chronic sleep impairment. The Veteran also reported re-experiencing traumatic events, avoidance behavior, negative alterations in cognition, numbing behavior, and hyperarousal. The Veteran reported that he had been married to his wife for 24 years and characterized his relationship as generally fulfilling and supportive. The Veteran reported that he was emotionally connection to his wife, his children, and his family. He reported that he was socially connected to his church and with friends. The examiner noted that there was no significant social functional impairment. The Veteran reported that his current work performance as a fraud investigator was excellent. He reported that he was in good standing with his current employer, and his relationships with his co-workers and supervisors through the years were characterized as typically positive and productive. The examiner noted that there was no significant occupational functional impairment.

Upon mental status examination, the Veteran was well-groomed, cooperative, and fully oriented. The Veteran maintained good eye contact throughout the interview and he appeared to be a reliable historian. The Veteran's mood was noted as euthymic and his affect was stable. The examiner noted that there was no evidence of significant social discomfort or anxiety during the interview. The Veteran's speech was spontaneous, articulate, and easily understood. There were no abnormal mannerisms observed. There was no evidence that the Veteran exhibited hallucinations, delusions, or psychoses. The Veteran denied suicidal ideation. The Veteran's attention and concentration were observed as normal and memory recall of service, symptoms, and related interview data appeared to be easily accessed by the Veteran. The examiner confirmed the diagnosis of PTSD, but reported that the Veteran's PTSD did not result in symptoms that were severe enough to interfere with occupational or social functioning, or to require continuous medication. The examiner acknowledged the March 2015 private mental health evaluation report, but noted that the level of impairment identified in that report were not present or observed at the Veteran's examination.

At a September 2016 private psychiatric evaluation, the Veteran reported that he experienced chronic sleep impairment, consisting of fragmented sleep and nightmares. He reported that he averaged 3-4 hours of sleep per night and that his lack of sleep had affected him in the workplace. He reported depressed moods, panic attacks, anxiety, suspiciousness, irritability, intrusive thoughts, mild memory loss, flattened affect, disturbances of mood and motivation, difficulty adapting to stressful circumstances, an inability in establishing and maintaining effective relationships, and past suicidal ideation. The Veteran reported having a strained relationship with his children from his first marriage. He reported that he has a loving relationship with his daughter from his current marriage. He reported that he had difficulty showing affection to his current wife. Further, he reported that he isolated himself and had difficulty engaging in activities outside of the home because he was easily startled and was hyperalert. In addition, he was irritable, easily agitated, and had angry outburst. Regarding his employment, the Veteran reported that he is behind on his work because he had difficulty focusing and concentrating. In addition, he reported that he did not have the patience to complete his work. He indicated that he did not feel he could work safely or effectively in his work environment and was considering early retirement. In

addition, the Veteran reported that he no longer attended church regularly and rarely socializes with friends and extended family.

Upon mental status examination, the Veteran was anxious with a blunted affect and psychomotor retardation. He was cooperative and appropriate without being spontaneous. His speech and thought process was normal. His speech was within normal limits. The examiner noted that the Veteran is impaired in his work. The Veteran denied suicidal and homicidal ideations. There were no delusions or hallucinations. While he reported problems with his memory, he was alert and oriented.

At a July 2017 VA examination, the Veteran reported experiencing intrusive thoughts, physiological responses to trauma, and avoidance. He reported persistent negative emotions and developing negative beliefs about himself. He reported persistent irritability, difficulty concentrating, exaggerated startle response, and hypervigilance. The Veteran reported having a good relationship with family, noting that he had a close family. He reported having a few long-term friends with whom he spoke with on the phone. He reported that he had been married for over 20 years, but noted that his wife got frustrated that he would not go out with her to crowded places. The Veteran reported he had been working 29 hours per week for the Industrial Commission. He reported that he was able to work mostly alone, and he reported that he did not have any trouble completing his work. He reported that he had been told that he could be “too aggressive” interpersonally with other people at work. He reported that he had to restrain himself and tried to be polite to people when he was working. The examiner noted that based on the subjective complaints, the Veteran had social and occupational impairment manifested by occasional decrease in work efficiency and intermittent inability to perform occupational task, although generally functioning satisfactorily.

Upon mental status examination, the Veteran was polite and cooperative. He put forth a good effort and appeared to be a good informant. He was dressed casually and appropriately and had good hygiene. His speech was within normal limits regarding articulation, rate, tone, volume, and production. His affect was appropriate to the content of the Veteran’s speech. He was alert, attentive, and oriented to person, place, time, and situation. Attention and concentration during the evaluation appeared adequate based on the Veteran’s ability to complete

questionnaires, respond to interview questions, and spell a word forward and backward. His immediate recall abilities were intact, and his remote and recent memory abilities were intact. His mood was described as “a little tense, a little nervous” and reported that his most significant problem was anxiety attacks that disturbed his sleep. The examiner confirmed the diagnosis of PTSD.


The examiner also provided comment regarding the conflicting medical evidence of record. In that regard, the examiner noted that appeared to have reported more social and occupational problems at his private evaluations than at his VA examinations. However, the VA examiner also noted that the conclusions drawn by the Veteran’s private provider were more extreme than what was supported by the available evidence. In that regard, the examiner cited to the fact that the private provider noted that the Veteran had an inability to maintain relationships with others, but that the Veteran himself had reported that he had relationships with friends and family members. Further, the examiner noted that the Veteran had difficulty with work and social relationships, but that the Veteran himself reported that he had not problems with work relationships and that he had friends. Further, the Veteran’s current reports of “close” relationships with family, which contradicted the findings of the private examiner. Further, the Veteran reported at the current examination that he was efficient in his work, which contradicted the private examiner’s findings that the Veteran had problems with reliability and productivity. In sum, the VA examiner noted that integrating all the findings of record, the Veteran’s occupational and social impairment appeared to be currently worse than reported at the 2016 VA examination, but less severe than the impairment noted by the 2016 private examiner’s evaluation. As such, the examiner noted that the Veteran was assessed as having occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally functioning satisfactorily.

The Board finds that the Veteran is not entitled to an initial rating in excess of 30 percent for PTSD. In this regard, the Veteran does not have social and occupational impairment manifested by reduced reliability and productivity. In fact, the Veteran reported that his work performance was “excellent.” Further, he reported feeling emotionally connected to his wife, children, and family; and a social connection to his friends and church. Further, the Veteran was not noted to

have frequent panic attacks, short or long-term memory loss, impaired judgement, impaired abstract thinking, serious disturbances of motivation and mood, or inability maintaining effective work and social relationships. The Veteran has reported that he, on occasion, has experienced suicidal ideation. However, he has not reported any specific thoughts, intent, or plan. In fact, his overall reports were somewhat vague. The Veteran does not have impairment in his speech, he does not have hallucinations, and he does not experience delusions. While the Veteran has been noted to be hypervigilant and experience hyperarousal, there is no indication from the record that they interfere with his ability to perform activities of daily living, to include having obsessional rituals. The Board acknowledges that the Veteran's private examiners have described more severe impairment than that identified by the VA examiners; however, those findings are not supported by the subjective symptoms provided by the Veteran. Further, while the July 2017 VA examiner did indicate that the Veteran's symptoms were more severe than those reported at his 2016 VA examination, his current symptoms, even when considered as a whole, do not indicate that he has social and occupational impairment manifested by reduced reliability and productivity. In fact, the July 2017 VA examiner specifically noted that the Veteran's PTSD was manifested by occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks. That is further supported by the Veteran's own statements that he was performing well at work, and that he was able to complete all his assignments without issue. Further, he was able to maintain relationships with family and friends. Therefore, the Board finds that an initial rating in excess of 30 percent for PTSD is not warranted. 38 C.F.R. § 4.130, Diagnostic Code 9411 (2018).

Accordingly, the Board finds that the preponderance of the evidence is against the claim and entitlement to an initial rating in excess of 30 percent for PTSD is not warranted. 38 U.S.C. § 5107 (b) (2012); *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990). |

IN THE APPEAL OF
JOE A. LYNCH


Docket No. 17-44 610



Kristin Haddock
Veterans Law Judge
Board of Veterans' Appeals

ATTORNEY FOR THE BOARD

Christina Quant, Law Clerk

YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. *The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order."*

If you are satisfied with the outcome of your appeal, you do not need to do anything. Your local VA office will implement the Board's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

- Appeal to the United States Court of Appeals for Veterans Claims (Court)
- File with the Board a motion for reconsideration of this decision
- File with the Board a motion to vacate this decision
- File with the Board a motion for revision of this decision based on clear and unmistakable error.

Although it would not affect this BVA decision, you may choose to also:

- Reopen your claim at the local VA office by submitting new and material evidence.

There is *no* time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. Please note that if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your appeal at the Court because of jurisdictional conflicts. If you file a Notice of Appeal with the Court *before* you file a motion with the Board, the Board will not be able to consider your motion without the Court's permission or until your appeal at the Court is resolved.

How long do I have to start my appeal to the court? You have **120 days** from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the Court. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the court. *As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you*, you will have another 120 days from the date the Board decides the motion for reconsideration or the motion to vacate to appeal to the Court. You should know that even if you have a representative, as discussed below, *it is your responsibility to make sure that your appeal to the Court is filed on time*. Please note that the 120-day time limit to file a Notice of Appeal with the Court does not include a period of active duty. If your active military service materially affects your ability to file a Notice of Appeal (e.g., due to a combat deployment), you may also be entitled to an additional 90 days after active duty service terminates before the 120-day appeal period (or remainder of the appeal period) begins to run.

How do I appeal to the United States Court of Appeals for Veterans Claims? Send your Notice of Appeal to the Court at:

**Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950**

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's website on the Internet at: <http://www.uscourts.cavc.gov>, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal **with the Court**, not with the Board, or any other VA office.

How do I file a motion for reconsideration? You can file a motion asking the Board to reconsider any part of this decision by writing a letter to the Board clearly explaining why you believe that the Board committed an obvious error of fact or law, or stating that new and material military service records have been discovered that apply to your appeal. It is important that your letter be as specific as possible. A general statement of dissatisfaction with the Board decision or some other aspect of the VA claims adjudication process will not suffice. If the Board has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Issues not clearly identified will not be considered. Send your letter to:

**Litigation Support Branch
Board of Veterans' Appeals
P.O. Box 27063
Washington, DC 20038**

Remember, the Board places no time limit on filing a motion for reconsideration, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to vacate? You can file a motion asking the Board to vacate any part of this decision by writing a letter to the Board stating why you believe you were denied due process of law during your appeal. *See* 38 C.F.R. 20.904. For example, you were denied your right to representation through action or inaction by VA personnel, you were not provided a Statement of the Case or Supplemental Statement of the Case, or you did not get a personal hearing that you requested. You can also file a motion to vacate any part of this decision on the basis that the Board allowed benefits based on false or fraudulent evidence. Send this motion to the address on the previous page for the Litigation Support Branch, at the Board. Remember, the Board places no time limit on filing a motion to vacate, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to revise the Board's decision on the basis of clear and unmistakable error? You can file a motion asking that the Board revise this decision if you believe that the decision is based on "clear and unmistakable error" (CUE). Send this motion to the address on the previous page for the Litigation Support Branch, at the Board. You should be careful when preparing such a motion because it must meet specific requirements, and the Board will not review a final decision on this basis more than once. You should carefully review the Board's Rules of Practice on CUE, 38 C.F.R. 20.1400-20.1411, and *seek help from a qualified representative before filing such a motion*. See discussion on representation below. Remember, the Board places no time limit on filing a CUE review motion, and you can do this at any time.

How do I reopen my claim? You can ask your local VA office to reopen your claim by simply sending them a statement indicating that you want to reopen your claim. However, to be successful in reopening your claim, you must submit new and material evidence to that office. *See* 38 C.F.R. 3.156(a).

Can someone represent me in my appeal? Yes. You can always represent yourself in any claim before VA, including the Board, but you can also appoint someone to represent you. An accredited representative of a recognized service organization may represent you free of charge. VA approves these organizations to help veterans, service members, and dependents prepare their claims and present them to VA. An accredited representative works for the service organization and knows how to prepare and present claims. You can find a listing of these organizations on the Internet at: <http://www.va.gov/vso/>. You can also choose to be represented by a private attorney or by an "agent." (An agent is a person who is not a lawyer, but is specially accredited by VA.)

If you want someone to represent you before the Court, rather than before the VA, you can get information on how to do so at the Court's website at: <http://www.uscourts.cavc.gov>. The Court's website provides a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to the represent appellants. You may also request this information by writing directly to the Court. Information about free representation through the Veterans Consortium Pro Bono Program is also available at the Court's website, or at: <http://www.vetsprobono.org>, mail@vetsprobono.org, or (855) 446-9678.

Do I have to pay an attorney or agent to represent me? An attorney or agent may charge a fee to represent you after a notice of disagreement has been filed with respect to your case, provided that the notice of disagreement was filed on or after June 20, 2007. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636. If the notice of disagreement was filed before June 20, 2007, an attorney or accredited agent may charge fees for services, but only after the Board first issues a final decision in the case, and only if the agent or attorney is hired within one year of the Board's decision. *See* 38 C.F.R. 14.636(c)(2).

The notice of disagreement limitation does not apply to fees charged, allowed, or paid for services provided with respect to proceedings before a court. VA cannot pay the fees of your attorney or agent, with the exception of payment of fees out of past-due benefits awarded to you on the basis of your claim when provided for in a fee agreement.

Fee for VA home and small business loan cases: An attorney or agent may charge you a reasonable fee for services involving a VA home loan or small business loan. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636(d).

Filing of Fee Agreements: If you hire an attorney or agent to represent you, a copy of any fee agreement must be sent to VA. The fee agreement must clearly specify if VA is to pay the attorney or agent directly out of past-due benefits. *See* 38 C.F.R. 14.636(g)(2). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the direct-pay fee agreement must be filed with the agency of original jurisdiction within 30 days of its execution. A copy of any fee agreement that is not a direct-pay fee agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. *See* 38 C.F.R. 14.636(g)(3).

The Office of the General Counsel may decide, on its own, to review a fee agreement or expenses charged by your agent or attorney for reasonableness. You can also file a motion requesting such review to the address above for the Office of the General Counsel. *See* 38 C.F.R. 14.636(i); 14.637(d).